Supreme Court, U.S.
FILED
JUL 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-194

In The

SUPREME COURT of the UNITED STATES

October Term, 1986

No._____

In the Matter of AMY M.
Petitioner

-against-

THE STATE OF NEW HAMPSHIRE
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT FOR THE
STATE OF NEW HAMPSHIRE

For The Petitioner
a Minor

HENRY MALACHOWSKI
JULIA MALACHOWSKI
Parents, Parties in
Interest, and Next
Best Friend

QUESTIONS PRESENTED

1. Whether the minor, Amy, and her parents' Fourth Amendment rights were violated by a Keene patrolman's forced entry into parents' home, without permission to enter, without probable cause where there was no offense being committed, seize the minor without a warrant, make an unreasonable arrest of the minor, tell her she is his prisoner and is going to YDC (Youth Development Center), remove her from her home, never read her her Miranda Rights, detain her overnight at the police station without written authorization from a judge, deny her the right to her own counsel and/or parents present, interrogate her and never inform her and/or her parents of the charge for her arrest.

2. Was Equal Protection and Due Process of the law under the Fourteenth

Amendment and N.H. Statutes violated when the Keene District Court failed to give Amy and her parents written notice of a petition of the specific charges or factual allegations, given to the child and her parents sufficiently in advance of the hearing to permit preparation?

3. Can the Keene District Court nullify the U.S. Supreme Court essentials of due process of the law by failure to give written notification given to the child and her parents of the minor's right to be represented by counsel retained by the parents, being that the minor is not indigent and where there is no written waiver for the court to appoint counsel for Amy?

4. Can the Keene District Court sustain a charge of delinquency of disorderly conduct when the court failed to order the recipients, who are named, by name, in the petition charge of August 4, 1984,

and as necessary parties to the offense, to appear at the initial hearing for confrontation and cross-examination guaranteed to Amy under due process of the law of the 14th Amendment and by the N.H. Constitution, part 1, art. 15?

5. Was it violative of due process of the law when the arresting officer was not present at the initial or adjudicatory hearing at the Keene District Court?

6. Was perjury committed by Sgt. Brown who was not a witness, when he signed the petition, under oath, which is contrary to the police report, stating that Amy committed a disorderly conduct offense on public property, NH RSA 644:2, naming the parents as recipients, that Amy was shouting obsenities at and having physical contact with Henry and Julia Malachowski; an offense which never occurred?

7. Can Sgt. Brown sign a petition for

the recipients named in the petition when he is not a recipient to the offense?

8. Was the 8th Amendment of the U.S. Constitution and N.H. Constitution, part 1, art. 15 violated when the minor was deprived of her liberty for thirty-nine (39) days when a plea of "Not True" was made at the initial hearing, where no sworn testimony or confrontation was given against Amy by the recipients?

9. Was the 6th Amendment violated when the minor was deprived of the right to be released to her parents, older married sister, relative or friend to obtain witnesses for her defense, as a due process right to a fair trial?

10. Was the 5th Amendment violated when the minor was deprived of written notice of the charge against her, where there is a plea of "chargeable" when neither the minor or her attorney (not retained by

the parents) made such a plea at any hearing, and where the judge affirmed Amy was not a delinquent? Could the Keene District Court sustain personal jurisdiction over Amy?

11. Can Amy be denied equal protection and due process of the law by the city attorney suppressing exculpatory evidence favorable to her defense for acquital by taking the police record of Amy out of the juvenile police files to give to his attorney so that it will not be used against him in parents' federal action in which he is named as defendant?

12. Can Amy be deprived of equal protection and due process of the law under the 14th Amendment by the City Attorney, Clerk of the Keene District Court and the Judge depriving the parents of their right to see the juvenile file on Amy and the charge for her arrest to assist her

in her defense?

13. Is the 1st Amendment offended by Amy swearing in the confines of her own home, where no complaints were filed; isn't this considered free speech?

14. Can the minor be denied the right to appeal when she does not know what an appeal means and was never told by her attorney?

15. Can the judge of the Keene District Court ignore the U.S. Supreme Court requirements of due process of the law and N.H. Constitution, part 1, art. 15, in juvenile delinquency proceedings where the minor was deprived of her liberty?

16. Was the Due Process Clause of the 14th Amendment violated when the Keene District Court failed to give written notice to the parents to appear in court, have authority to adjudicate parents' custody rights of Amy and all other rights

secured to her by the U.S. Constitution without having personal jurisdiction over Amy and her parents?

17. Was due process of the law violated when the recipients named, by name, in the petition charge as necessary parties to the alleged offense, unlawfully signed by Sgt. Brown, were not summoned to court to testify at the time prosecution must establish probable cause to believe the minor committed the offense of disorderly conduct; where the arresting officer was not present to offer testimony and where prosecution and the judge were fully aware that Sgt. Brown cannot sign the petition being that he is not the recipients and that the petition charge conflicts with the police report?

18. Being that Sgt. Brown signed the petition of August 4, 1984 and was not a witness, where such petition was never

served upon the parents as required by law, N.H. RSA 169-B:7, where parents are named as the recipients to the alleged offense, never served upon Amy; wouldn't his testimony be inadmissible as being hearsay as decided by the United States Supreme Court?

19. Would it be considered double hearsay of a supposed "plea of chargeable" where the arresting patrolman was not present in court and the parents were not made known that they are named as the recipients to the offense to offer testimony on August 4 and September 11, 1984, to corroborate or rebut the offense in the petition of August 4, 1984, signed by Sgt. Brown?

20. Isn't this considered lack of evidence where the standard of reasonable doubt is precluded on grounds that Sgt. Brown's petition charge is hearsay, is

inadmissible, wherein the Keene District Court cannot sustain a charge of disorderly conduct without written notice given to the recipients to appear in court as necessary parties to the offense prerequisite to confer jurisdiction upon the court to act, and without the arresting patrolman present, where Amy was deprived of her right guaranteed under due process of the law, the right to confrontation, cross-examination of witnesses against her; shouldn't the minor have been released instead of depriving her of her liberty? Isn't this violative of the 5th and 14th Amendments of the U.S. Constitution and N.H. Constitution, part 1, art. 15?

21. At the January 2, 1985 hearing in U.S. District Court re Malachowski v City of Keene, et al, C-84-697-L, all defendants did not know who appointed Mr. Park

as Amy's attorney; isn't it conflict of interest where Attorney Park was a former assistant attorney for the City of Keene and attorney for the Keene Police Department?

22. If Mr. Park was supposed to be Amy's attorney, wasn't it his duty to protect and defend Amy's rights secured by the Constitution of the U.S. and N.H. Constitution instead of aiding and abetting in prosecuting her, depriving her of her liberty when he knew the petition charge against her was false and that she was not a delinquent?

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LIST OF PARTIES TO THE PROCEEDING

AMY CHRISTINE MALACHOWSKI, a minor
Petitioner

-against-

STATE OF NEW HAMPSHIRE

CITY OF KEENE
MARK J. BENNETT, Esq.

CITY OF KEENE POLICE DEPARTMENT
PATROLMAN RANDALL LaCOSTE
SERGEANT H. BROWN

JUDGE BERNARD J. HAMPSEY, Jr.
JUDGE RICHARD J. TALBOT

DAVID S. PARK, Esq.

YOUTH SERVICES INC. of the
MONADNOCK REGION, a corporation
Respondents

COUNSEL FOR RESPONDENTS

BRADFORD W. KUSTER
CRIMINAL JUSTICE BUREAU
STATE HOUSE ANNEX
CONCORD, NEW HAMPSHIRE 03301
603-271-3671

PAUL G. SCHWEIZER, PUBLIC DEFENDER
117 NORTH STATE STREET
CONCORD, NEW HAMPSHIRE 03301
(603) 224-1236

MARK J. BENNETT, Esq.
ATTORNEY for the CITY OF KEENE,
NEW HAMPSHIRE

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No._____

AMY CHRISTINE MALACHOWSKI, a minor
Petitioner

-against-

STATE OF NEW HAMPSHIRE
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
FOR THE STATE OF NEW HAMPSHIRE

Petitioner prays that a writ of certiorari issue to review the order of denial of the Supreme Court for the State of New Hampshire dated February 10, 1986, re 85-394 appeal, which affirmed the denial of the Cheshire County Superior Court entered July 30, 1985.

DECISION BELOW

The Supreme Court for the State of New Hampshire,. namely John W. King, Chief Justice,. David A. Brock, William F. Batchel-

der, David H. Souter, William R. Johnson, Judges,. entered its order of denial dated February 10, 1986 affirming the order of denial of the Cheshire Superior Court, a copy of such order of denial is printed on page 1a of the Appendix herein.

Petitioner submitted a Motion to Reconsider dated February 20, 1986.

Motion for reconsideration is denied, dated April 17, 1986 is printed on page 35a of the Appendix herein.

Ralph H. Wood
Clerk

JURISDICTION

This petition for Certiorari to review the order of denial of the Supreme Court for the State of New Hampshire filed February 10, 1986, is timely made within 90 days of the filing in that Court on April 17, 1986 of its order of denial on petitioner's Motion to Reconsider.

The jurisdiction of this Court to review such order of denial is invoked pursuant to 28 U.S.C Section 1254 (1), Rule 17 (a)(c) of this Court and federal questions; this case comes within the provisions because the decision of the Supreme Court for the State of New Hampshire in its order of denial affirming the Cheshire County Superior Court order of denial, is in conflict and repugnant to the U. S. Supreme Court decisions, other federal and Appeals Court decisions, the State of New Hampshire Courts' decisions, New Hampshire Constitution and to the Constitution of the United States.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

1st Amendment to the Constitution of the United States, provides:

> "Congress shall make no law...or abridging the freedom of speech.."

4th Amendment to the Constitution of the United States, provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause..."

5th Amendment to the Constitution of the United States, provides:

> "No person shall be held to answer ...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..."

6th Amendment to the Constitution of the United States, provides:

> "In all criminal... and to have assistance of counsel for his defense." "to seek witnesses"

7th Amendment to the Constitution of the United States, provides:

> "Right to trial by jury."

8th Amendment of the Constitution of the United States, provides:

"...Cruel Punishment Prohibited... nor cruel and unusual punishment inflicted."

Section 1 of the 14th Amendment to the Constitution of the United States, provides:

"...nor shall any State deprive any person of life, liberty, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. Section 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

(a) The Facts

Petitioner, a minor, Amy Christine Malachowski (hereinafter Amy), appellant above named, through her parents as parties in interest, by legal adoption in 1969 at age eleven (11) months and has had excellent family relationships evinced by school records, other family members and friends.

On Friday, August 3, 1984, when Amy's parents realized she was not at home, and fearing for her health due to a serious head injury, Mrs. Malachowski called the Keene Police for help for a possible runaway, while Mr. Malachowski searched the area in his car.

Amy was found by her father near the residence of the brother of the 16 year old male who parents forbade Amy to see, and brought back home by her father.

Keene Patrolman Randall LaCoste, after parking the police car in the parents' driveway, appeared at the kitchen door and was told by the father that Amy was already home. Amy, at that time, was attempting to throw-up in the kitchen sink, saw the patrolman, became annoyed and briefly started to use foul language at her father in the total confines of her home. The patrolman, without a warrant, without permission from the parents, without probable cause, unreasonably forced entry by pushing the kitchen door from the father's holding, entered petitioners' home where no offense was being committed. 5-10 minutes later, while on the second floor, where Amy was not listening to the patrolman or using foul language, but only mumbling to herself, which could not be heard on private or public property, the patrolman shouted at Amy to "Shut-up"

then without probable cause, told her she was arrested, is his prisoner and is going to YDC. Without giving Amy or her parents the charge for the arrest or reading Amy her Miranda rights, Patrolman LaCoste took her to the Police Station where she was detained overnight without a warrant and/or written pre-arraignment orders from a judge. She was not allowed to call her parents or her attorney, Mr. "O", but was interrogated.

Parents went to the police station, were told nothing but that the juvenile officer will call in the morning.

Parents' attempts to contact Mr. "O" Friday night and Saturday were futile.

At 8:50 a.m. Saturday, August 4, 1984, Sgt. H. Brown, juvenile officer, 'phoned the parents that there was to be a hearing at 9:00 and asked if Amy hit them; the response was, "No, never!". Parents

were not told where the hearing was to be held or that it was an arraignment, or given the reason for Amy's arrest or why she was being detained. Parents repeatedly insisted upon being present, were told it was not necessary, would be better if they did not come, would be hard on the parents and would cause more trouble. He never clarified what trouble.

At 10:00 a.m. that day, Sgt. Brown 'phoned the parents and said he is taking Amy to YDC, she denied the charges, she will have no record, will be detained for twenty-one (21) days, and will realize the grass is not greener on the other side.

Later that day, Amy called her mother several times begging to come home, does not know why she is at YDC, said they tried to find a placement for her, that there is to be a hearing on August 21,

and asked to get the attorney to get her out.

On Monday, August 6, 1984 parents were finally able to contact Amy's attorney, Mr. "O", told him to protect Amy and get her out of YDC, parents believe there is a mistake in Amy's arrest, were never told why Amy was arrested in her own home by the police, and that Amy called home several times on Saturday. Mr. "O"'s reply was that she will learn that the grass is not greener on the other side. Mr. "O" was retained as Amy's attorney for the action against Welfare for Amy's injury, was given evidence of her injury and the fact that she may not be competent and could be further injured by her detention at YDC.

On August 24, 1984, parents, at Amy's request, visited her at YDC and later met with Mr. Adams, administrator, who relat-

ed that he overlooked the psychological evaluation. Parents were never given written notice of such evaluation and of their right to object under NH RSA 169-B: 20 and RSA 169-B:21, for such unconstitutional invasion into Amy's and her parents' "privacy" and "interests" protected by the 4th Amendment of the Constitution of the United States. Parents noted a distinct personality change in Amy which was caused by the injury to her head. It was Amy, not the Keene District Court, who notified her parents that the hearing of August 21, 1984 was postponed to September 11, 1984.

Parents were given no notice by the court, written or otherwise, of the hearing on September 11, 1984, or that it was to be an adjudicatory hearing. At the onset of the hearing, Mr. Park, City attorney Mr. Bennett and Judge Talbot said

that Amy was adjudicated not a delinquent. Parents then asked asked the court, "On what grounds is she being held?", and were ignored. A recess was called so that Mr. Archibald of Youth Services, Inc. (hereinafter YSI) could convince the parents who were adament to Amy being placed in a foster home, since, as stated by Mr. Archibald, custody was already given to YSI by prior agreement by Judge Talbot, MM Park and Bennett, with a foster home set. Mr. Archibald further stated that Mr. Parento (Amy's school counselor, who, parents later found out, was one of the founders of YSI) had already been in contact with him and discussed Amy.

Judge Talbot, MM Bennett and Park ignored Amy's constitutionally protected rights, placed Amy with YSI without written notice of a petition given to Amy or her parents or statutory grounds for ter-

minating parents' physical and legal custody rights of Amy and her right to be free. NOTE: At the hearing of September 11, there was no plea of "chargeable" or "guilty" made by Amy or Mr. Park. The issues of the petition charge against Amy were never brought before the court. It was not an adjudicatory hearing under RSA 169-B:16, it was a custody hearing where YSI took "legal supervision" of Amy (id app page 27a) in violation of parents' due process rights which Federal Court held as illegal (id app page 14a, para 13).

Right after the September 11 hearing and on subsequent dates, parents asked Mr. "O" to appeal; his response was that "statute prevents appeal". On September 18, 1984 Mr. "O" withdrew, releasing his records to the parents.

Parents sought to see the files at

Keene District Court to see just what the charges were for Amy's arrest, why she was still being held and the grounds by which the court deprived the parents of their custody rights. They were denied access by the Clerk of the Court, Mr. Bennett and the presiding judge. Also denied them was the right to see the police reports.

On October 4, 1984, in seeking to retain another attorney to handle the Welfare matter of Amy's injury, parents had him review the records given them by Mr. "O". It was then that they were apprised that there was a petition against Amy and asked if she ever hit them since that's what the charge is. When he was told what actually happened, he advised their contacting the juvenile officer who signed said petition and have the charges dismissed since they are false. On Octo-

ber 5, parent met with Sgt. Brown and made such request and also sent written request to him with a copy to the Court and to Mr. Bennett. (id app page 29a)

Parents find that they were never given legally sufficient written notice of the petition of August 4, 1984 as required by law, NH RSA 169-B:7 and the U.S. Supreme Court in juvenile delinquency proceedings as in re Gault 387 US 1. Parents are named, by name, as the recipients to the offense of disorderly conduct, NH RSA 644:2 against Amy (id app page 22a) to which the parents never filed a complaint; the parents were never called to court for confrontation or cross-examination. The arresting officer, Patrolman LaCoste, was not in court at the initial hearing of August 4 or at the hearing of September 11, 1984; and since Sgt. Brown was not a witness to the alleged offense,

he could not offer testimony as it would be considered inadmissible as being hearsay, and due to the fact that the alleged offense never happened.

Parents question just who was in court at the initial hearing, and if there was a judge present. Statements were made at the February 13, 1985 hearing which raise doubts whether a judge or Mr. Bennett were there. Sgt. Brown had said that Judge Hampsey made the order on August 4 whereby Amy was committed to YDC; the state's attorney for the judges say, "No, Judge Talbot presided". When the question of who made the order on August 4, 1984 for the City of Keene to be the legally liable unit for Amy's placement, Judge Talbot said he did not issue the order; while at the October 11, 1984 hearing, after parent recited the due process procedures in re Gault and showed parents

were not served (as shown in id app page 24 a), that they are named as the recipients to the offense (id app page 22a), were never called to court for confrontation and cross-examination, that the offense is false; Judge Talbot questioned Mr. Bennett whether due process was met on August 4, to which Mr. Bennett's response was, "I believe so". Parents' move for dismissal of the false charges against Amy was ignored.

Commencing on August 4, 1984 to June 21, 1985, Amy and her parents were never given written notice of the petition of August 4, 1984 as required by law or of the statutory grounds for terminating parental rights defining the state's interest for taking custody of Amy to give to YSI as required by law, RSA 169-C or 169-D. On September 11, 1984 Judge Talbot said "Amy is not a delinquent", there-

fore, NH RSA 169-B, delinquency statute against Amy, no longer applied. There were no statutory grounds for holding Amy. Parents moved for return of custody and dismissal of the case against Amy, but were continuously denied or ignored. The court was without personal jurisdiction over Amy and her parents to adjudicate their rights, being that Amy and her parents were never served with written notice of the petition of August 4, 1984 as required by law, RSA 169-B:7 and as required by the U.S. Supreme Court in re Gault, supra, a copy of which was given to Judge Talbot at the October 11 hearing which he ignored, refused to dismiss the action against Amy for the court's failure to comply with the requirements of due process of the law, and that without the recipients and the arresting officer in court at the initial hearing, the

court had no case. Judge Talbot continued custody of Amy with YSI further depriving her of her liberty.

(b) Proceedings Below

On August 23, 1985, petitioner filed an appeal, No. 85-394, with the Supreme Court for the State of New Hampshire from a decision entered on July 30, 1985 re appeal Docket No. 85-S-188 by the Superior Court for the County of Cheshire.

Petitioner filed a Motion to Expedite; respondents filed briefs in response to petitioner's appeal (id Exh page 1b, 3b).

The court acted upon respondents' briefs nullifying the Constitution of the United States, N.H. Constitution and the U.S. Supreme Court constitutional due process requirements and decision as in re Gault, supra. The N.H. Supreme Court denied petitioner's appeal (id app page 1a).

Petitioner filed a Motion to Reconsider (id app page 3a) showing the court is in gross error in its decision which nullified the U.S. Supreme Court decisions and is repugnant to the U.S. Constitution, the N.H. Constitution and to its own State laws; that the lower Keene court (Judge Talbot) admitted Amy is not a delinquent, therefore the delinquency statute, RSA 169-B cannot apply. Amy's appeal is timely filed on grounds that the Keene District Court failed to instigate statutory grounds for holding Amy. The court had no personal jurisdiction over Amy to adjudicate her rights; the fact that the alleged charge RSA 644:2, as applied, is unconstitutional, void for vagueness; the facts on record that Amy was deprived Due Process and Equal Protection of the laws where all court files and police records were kept from her

parents to assist Amy in her defense (id app 31a, 34a); that the action should have been dismissed on August 4, 1984 for failure to call recipients, as parties to the alleged offense, to court, as in re Gault, supra. (id app page 23a, 24a)

The N.H. Supreme Court denied petitioner's Motion to Reconsider, without grounds (id app page 35a, 36a, 37a, 38a).

Petitioner is here before this Supreme Court of the United States to vindicate her rights; that without Due Process of the law, as required in re Gault, supra, the lower courts cannot hold Amy delinquent, when in fact, no offense was committed and the petition was perjured.

REASONS FOR GRANTING THE WRIT

Patrolman LaCoste forced entry into Amy's/parents' home without probable cause, where no offense was being committed, unreasonably arrested Amy, a minor;

removed her from her own home; detained her at the police station without notifying the minor or her parents of the charge for the arrest, violated Amy's and her parents' Fourth Amendment rights of:

> "the right of people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures, shall not be violated."

Bevins v Six Unknown Agents 463 US 388; Monroe v Pape 365 US 167; Payton v New York 445 US 573; Mapp v Ohio 367 US 643; Johnson v U.S. 333 US 13; Beck v Ohio 379 US 89; Llaguno v Mingey 763 F2d 1560 (7th Cir. 1985) for violations of 4th Amend.; Madison v Purdy 410 F2d 90 (5th Cir. 1969) State v Morse 125 NH 403; State v Chaisson 125 NH 810 (LaCoste).

> "there is no "good faith" in the validity of an arrest without a warrant" and for unlawful arrest without an offense committed. Anno 26 A,L,R. 286

Sexton v Gibbs 327 F.Supp 134; Basista v Weir 340 F2d 74 (3rd Cir. 1965); Peterson

v Stanczak 48 F.R.D. 429; U.S.C.A. Const. Amend. 4.

There were no pre-arraignment orders on August 3, 1984 signed by a judge for Amy's detention (Exh. page 25a, petition of August 4, 1984); Amy was denied the right to call her parents and her counsel; was interrogated in violation of her rights under Miranda v Arizona 384 US 436 that all information unconstitutionally seized is inadmissible, as in Mapp v Ohio supra; State v Morse, supra; State v Benoit 126 NH 6 (1985); U.S.C. Amend. 4 & 5.

Sgt. Brown's oral notice at 8:50 a.m. Saturday, August 4, 1984 of a hearing at 9:00 that day, without specifics or of the allegations, that it was an arraignment, where the hearing was to be held, or why she was being detained, does not meet due process of the law. NH RSA 169-B:7 requires the court to issue summons

to the parents with petition attached to appear in court as in re Russell C 120 NH 260; DiPietro v Lavigne 98 NH 294; in re Poulin 100 NH 458; and as required by the U.S. Supreme Court in re Gault, supra.

> "(1) Written notice of the specific charge or factual allegations, given to the child and his parents or guardian sufficiently in advance of the hearing to permit preparation"

Amy and her parents were never served notice of the petition of August 4, 1984 (Exh app page 24a) as required by law and as in re Gault, supra.

The petition names the parents as recipients to the alleged offense, that Amy was fighting and having physical contact with her parents, Henry and Julia Malachowski (id app page 22a); is fatally defective under RSA 169-B:6, lacking in particularity as being unconstitutional and void for vagueness. State v Mealey 100 NH 228, and is contrary to the August

3, 1984 police report which shows Amy was not fighting and having physical contact with her parents. NH RSA 644:2 contains a number of different offenses, all of which are characterized with the intent to disturb the public, and as applied against Amy, is unconstitutional, void for vagueness. State v Laponsee 115 NH 56; State v Nickerson 120 NH 821. Amy was in her own home expressing free speech at her parents, within the confines of her own home. Her parents did not file a complaint and there was no intent to disturb the public. Such free speech in her own home is under the protection of the 1st and 4th Amendments of the U.S. Constitution and N.H. Constitution, pt 1, art 19.

> "Cursing in the presence of a police officer is considered protected free speech under the U.S. Constitution (U.S.C.A. Amend. 1)"

Lusk v Roberts 611 F.Supp 564; State v Nickerson, supra; Llaguno v Mingey, supra.

At the initial hearing of August 4, of which parents were given no written notice of the petition of August 4, 1984 to appear in court, and as required in re Gault, supra, where Amy may be deprived of her liberty and where parents' custody rights were at stake at 550 and as in Stanley v Illinois 405 US 645; Amy was not given written or oral notice of the petition of the charge for her arrest as provided by RSA 169-B:13(a) by the court. Recipients were not summoned (id app page 24a); the arresting officer was not present in court; Sgt. Brown, who signed the petition naming himself as petitioner, could not offer testimony or offer proof beyond a reasonable doubt as required under RSA 169-B:17. He was not a witness and his testimony would be inadmissible

as being hearsay, as in re Gault at 562, footnote 98; in re Russell C, supra; Kennedy v Meara 127 Ga 68; McEntee v Lynch 223 Ill 346; Ex parte Molloy 122 Va 298; Karrib v Bailey 212 Mich 502; Sharp v State 240 Miss 629; Ex parte Naccarat 328 Mo 722; in re Poulin, supra. Prosecution did not obtain witnesses, Barber v Page 390 US 719; Right to Confront Witnesses 23 L Ed 853; Pointer v Texas 380 US 400; Boykin v Alabama 25 L Ed 274; Molloy v Hogan 378 US 1; in re Gault, supra; Garner v Louisiana 368 US 157, "as devoid of evidence"; Hedgwood v Kindrik 264 F.Supp 720; Motes v U.S. 178 US 458. Without the recipients at the initial hearing, the court had a duty to dismiss the action as in re Gault, supra, and for lack of personal jurisdiction over the recipients to adjudicate their rights and Amy's rights as in Rankin v Howard 633 F2d 844

(9th Cir. 1980); Meyer v Nebraska 262 US 390; Prince v Massachusetts 321 US 158, for failure to provide equal protection and due process of the law; see Shore v Howard 414 F.Supp 379 (1976) at 385 (4,6) (7, 8) citing ex parte Virginia.

Kinney v Lennon 425 F2d 208 (8th Cir. 1970) ordered the minor released to the parents to seek witnesses as in Washington v Texas 388 US 14 as a due process right under the 6th Amend. and as in re Winship 397 US 358 Sect. 6, Right to Bail or Release from Detention at 958 and as provided by RSA 169-B:11. Amy's parents were the only persons who could aid her to resist the perjured petition charge signed by Sgt. Brown. There was no probable cause hearing under RSA 169-B:14, I (1) and as in Gerstein v Pugh 420 US 103; denied a right without due process as in Bell v Burson 402 US 535 (1971). In vio-

lation of due process of the law, Amy was deprived of her liberty at YDC for 39 days on a plea of "Not True" violating the maximum period for detention of 21 days mandated by RSA 169-B:14 II, see Eric C 124 NH 222 where the court forfeited jurisdiction after 21 days due to the fault of the state; was cruel and unusual punishment, U.S.C.A. 5th and 8th Amend.

Suppression of exculpatory evidence, police reports of August 3, 1984 (theft by Mr. Bennett) favorable to Amy's acquittal, is not within the scope of prosecuting attorney's duties - for which there is no immunity - as in Hilliard v Williams 516 F2d 1344 (6th Cir. 1975); Haaf v Grams 355 F.Supp 542. It is not within the scope of prosecuting attorney, clerk of the court and presiding judge to deprive parents of their right under RSA 169-B:35 and under the due process and

equal protection clause of the 14th Amendment to see the court files to defend the action against Amy, which deprived Amy and her parents of constitutionally protected rights in violation of § 1983. Defendants permitted the perjured petition charge against Amy. All defendants had copies of the petition and the police report. In Mooney v Holohan 294 US 103

> "The Constitutional requirement of due process is not satisfied where a conviction is obtained by the prosecution of testimony known to the prosecuting authorities to be perjured."

as in Brady v Maryland 373 US 83, as being violative of due process.

All defendants were wilful participants in joint activity with the state or its agents in depriving Amy of her liberty and rights secured to her by the Constitution of the United States; see U.S. v Price 383 US 783.

Where state statutes are unconstitu-

tional, void for vagueness, unconstitutionally applied and ignored, as in Mitchum v Foster 407 US 225; Newton v Burgin 363 F.Supp 783; Conover v Montemuro 477 F2d 1073 (3rd Cir. 1972-73); Alsager v District Court 518 F2d 1160(8th Cir. 1975) and in Gault, supra, juvenile delinquency proceedings; where Judge Talbot said Amy is not a delinquent, petitioner is entitled to protection of her rights secured to her by the Constitution of the United States in the lower Keene court, Superior Court and N.H. Supreme Court.

Where there is "bad faith" and concerted overt acts, as in Hoffman v Halden 268 F2d 280 (9th Cir. 1959), Amy was deprived of her liberty without due process of the law.

Where no offense was committed, Amy's rights protected under the 4th, 5th and 14th Amendments of the U.S. Constitution

and the right to fair and impartial proceedings under the 7th Amendment were clearly violated.

By private, prior agreement, Judge Talbot, MM Bennett, Park and YSI, as wilful participants in depriving Amy of her liberty, where physical custody of Amy was held at YDC under RSA 169-B, as in State v Bryan 123 NH 420, Sgt. Brown, as the petitioner, could not prove the case beyond a reasonable doubt as required by RSA 169-B:17 against Amy; as in State v Robert H 118 NH 713, "legal supervision was given to YSI" (id app page 27a) "without clear showing" as in State v LeFebvre 91 NH 382, terminated Amy's and her parents' rights without instigating statutory grounds, deprived Amy of her Constitutional rights in violation of § 1983. The court had no personal jurisdiction over Amy and her parents, it lacks all juris-

diction to adjudicate the parties' rights. See Rankin v Howard, supra, there could be no enforceable order that can be entered, are hence, null and void. Manning v Ketchum 58 F2d 948 (6th Cir. 1932) as CORAM NON JUDICE; as in Gault, supra; in Poulin, supra; DiPietro v Lavigne, supra; Doe v County of Lake, Indiana 399 F.Supp 553, where

> "A judge can be sued for failing to perform administrative acts in violation of the constitutional rights of certain citizens."

Judge Talbot, in concerted, overt acts with all named defendants, made private, prior agreements "under color of law" to give parents' custody rights of Amy to YSI, is unconstitutional, deprived Amy and her parents of due process of the law to rebut, confront the issues in which he made his decision. See Escalera v N.Y. Housing Authority 425 F2d 853 (2nd Cir.

1970) citing Goldberg v Kelly 397 US 254, and has unconstitutionally continued placement of Amy with YSI through Amy's minority.

Amy was never given written notice of the petition against her. 25 L Ed 2d 368 at 960 9, Right to Confrontation or Cross-examination.

> "Absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in absence of sworn testimony subjected to the opportunity for cross-examination in accordance with the law and constitutional requirements, as in Gault, the court overturned a state court determination of delinquency."

In the instant action, the recipients to the alleged disorderly conduct offense, Henry and Julia Malachowski, were not called to court as witnesses (id app page 23a); the arresting officer was not present, Sgt. Brown was not witness and could offer no testimony, there was no evidence

see Garner v Louisiana, supra; the offense was perjured, precludes a plea of "chargeable" or "guilty". Parents were at all time in court at September 11th hearing, the issues of the alleged offense of disorderly conduct were never raised. Neither Amy or her attorney made a plea of "chargeable" or "guilty", clearly violated Amy's rights under the 5th Amendment of the U.S. Constitution and NH Constitution, pt 1, art 15, depriving Amy of her liberty without due process of law U.S.C.A. Const. Amend. 5 for an offense that never occurred and was perjured; Boykin v Alabama 25 L Ed 274, citing Woods v Rhay 68 Wash 2d 601; Faretta v California 422 US 806, "never notified of the charge" Lego v Twomey 404 US 477, "unless where waiver was obtained"; there is no written waiver on record; Molloy v Hogan, supra, "without evidence, admissibility of plea

is void"; as in Garner v Louisiana, supra; McKeiver v Penn. 403 US 528, "as a waiver of rights"; McCarthy v U.S. 394 US 459, "where trial judge must inquire to a plea" parents say there was no hearing, no judge. In Bramlet v Peterson 307 F.Supp 1311

> "record must affirmatively show that a guilty plea is knowingly and voluntarily made"

See State v Benoit, supra.

Amy contends she was never made known the petition charges against her, she was continuously told by her attorney that she is a delinquent for running away and swearing; was never told the meaning of appeal, RSA 169-B:29.

Where there is suppressed and concealed court files and police reports, Amy cannot waive her right to appeal that which is concealed (id app page 31a,34a). Statute starts to run as in American Civ-

il Liberties Union v Chicago 431 F.Supp 25, the appeal was timely filed by her parents, parties in interest.

All through the litigation, Amy was never read her Miranda rights to remain silent; the court, on its own motion should have dismissed the delinquency action against Amy on August 4, 1984. Sgt. Brown is not the recipient named in the petition, he could not be the petitioner. The recipients were never called to court as in Gault; the court had no case.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

July 10, 1986

Respectfully submitted,
Parents, Parties in Interest
& Next Best Friend

HENRY MALACHOWSKI
JULIA MALACHOWSKI
28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

A P P E N D I X

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 85-394 In the Matter of Amy M.

..the court upon. February 10, 1986. made the following order:

Decision below is summarily affirmed in accordance with Rule 25(1)(d). In in re Cindy G., 124 N.H. 51, 59 (1983), we held that RSA 169-B:29 creates "a right to de novo appeal within thirty days of the orders arising from the final dispositional hearing held immediately after the adjudicatory hearing." In this case, the adjudicatory hearing was on September 11, 1984, and the dispositional hearing was on October 11, 1984. See Exhibit B of motion in response to notice of appeal filed in behalf of the juvenile, Amy M. Thus, any right to a de novo appeal to the superior court in this case expired long before the parents of Amy M. filed

their appeal to the superior court in June, 1985. This order is based solely on the issue of timeliness. We do not address the question of whether parents of a juvenile have any appeal rights from dispositional orders issued under RSA 169-B:19.

Ralph H. Wood

Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 85-394

THE STATE OF NEW HAMPSHIRE

V.

IN THE MATTER OF AMY M.

MOTION TO RECONSIDER

Submitted by
HENRY MALACHOWSKI
JULIA MALACHOWSKI
Parents, parties in interest
28 Wright Street
Keene, NH 03431
(603) 352-5822

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 85-394

THE STATE OF NEW HAMPSHIRE

V.

IN THE MATTER OF AMY M.

MOTION TO RECONSIDER

NOW COME Henry and Julia Malachowski, the parents and parties in interest for Amy M., above named appellant Juvenile Delinquent, and hereby move this Court to Reconsider its denial dated February 10, 1986 in the above matter based upon the following and say:

1.

Parents and parties in interest, herein seek to vindicate Amy's Civil Rights under 42 USCS 1983, conspiracy to obstruct justice and violation of Amy's privacy and interests protected by the Fourth Amendment and all rights secured

to Amy by the Federal Constitution wherein appellees acted "under color of law", deprived Amy procedural due process, where state laws were unconstitutionally applied and ignored, where Amy's parents were denied access to the juvenile files and police reports, all of which deprived the parents their rights to assist in defense of Amy's constitutionally protected rights, privileges, or immunities under the Fourteenth Amendment, and subsequently the Fourth, Fifth, Sixth and Seventh Amendments, and N. H. Constitution.

2.

On August 3, 1984, in response to parents' call to the Keene Police for a possible runaway (hereinafter Amy-appellant above named), parents contend that Patrolman LaCoste of the Keene Police Department, violated Amy's rights by forced entry into Amy's home, wherein she was al-

ready brought back by her father. Then without probable cause, without a warrant, without parents' permission to enter, and without reasonable grounds, arrested Amy for using foul language in her own home, which could not be heard on public property. Appellant was expressing free speech in her own home, which is her right protected by the First Amendment of the Federal Constitution. As cited in Lusk v Roberts, 611 F.Supp 564 (1985):

> "Cursing in the presence of a police officer is generally considered protected free speech under the United States Constitution (U.S.C.A. Const. Amend. 1)"

NOTE: Parents herein make comment:

Parents were made aware on October 4, 1984 of a petition against Amy, dated August 4, 1984, signed by Sgt. H. Brown, of disorderly conduct as an offense that was committed on public property RSA 644:2

naming the parents as recipients to the offense that Amy was having physical contact and fighting, swearing at her parents who were never called to court.

Through Federal Court intervention, the police report of August 3, 1984 was made available to the parents on January 21, 1985, showing no physical contact or fighting, and that the alleged offense was committed in Amy's own home.

3.

The Fourth Amendment of the Federal Constitution provides: as in State v Chaisson 125 NH 810 (1984) Ptlm LaCoste, false arrest.

> "Both the New Hampshire and the Federal Constitutions afford the home solicitous protection from warrantless searches and seizures by the police. U.S. CONST. Amend. IV; N.H. CONST. pt 1, art. 19."
>
> "The constitutional protections against unreasonable searches and sei-

> zures apply to all invasions on the part of the government and its employees of the sanctity of a man's home. U.S. Const. Amend. IV; N.H. Constitution pt 1, art. 19."

For unconstitutional seizure, also see; Bevins v Six Unknown Agents 463 US 188 (1971); Monroe v Pape 365 US 167 (1961); Payton v New York 445 US 573 (1980); State v Morse 125 N.H. 403 (1984).

4.

Patrolman LaCoste removed Amy from her home, never telling her why she was arrested, and never read her her Miranda rights; see Miranda v Arizona 384 US 436; denied her the right to call her parents and her counsel, detained her at the police station overnight without telling her of the charge for her arrest or notifying the parents of same. U.S. Const. Amend. IV; N.H. Const. pt. 1, art. 19.

5.

On August 4, 1984 at 8:50 a.m., par-

ents were told that there would be a hearing at 9:00 a.m. that day, without any other specifics, that their presence was not necessary but would possibly cause more trouble. U.S. Const. Amend. IV. See in re Russell C. 120 NH 260(1980).

6.

At approximately 10:00 a.m., Sgt. H. Brown called the parents by 'phone, as he had done at 8:50 a.m., said Amy pled "NOT TRUE" and was being taken to YDC for twenty-one (21) days.

7.

Parents contend that Sgt. Brown's oral notice at 8:50 a.m. Saturday, August 4, 1984, that there is to be a hearing at 9:00 a.m. does not meet the procedural requirements of due process. New Hampshire statute RSA 169-B:7 requires, by law, that the Court shall issue summons with petition attached to be served upon the

parents to appear in court. The record shows that the parents were never served (Exh. 1 hereto attached). The U.S. Supreme Court decision in re Gault 387 US 1 mandates written notice of the specific charge or factual allegations, given to the child and his parents or guardians sufficiently in advance of the hearing to permit preparation. The petition charges (see Exh. 1) named the parents by name as the recipients/witnesses and parties to the offense, yet were not called to court. See in re Gault, supra, at 554:

> "..is fatally defective for failure to accord the rights of confrontation and cross-examination which the Due Process Clause of the Fourteenth Amendment of the Federal Constitution guarantees in state proceedings generally."

8.

Amy's attorney was not retained by her parents, as required in re Gault, supra. he never showed her the August 4, 1984 pe-

tition charge against her at the initial hearing or at any time. She was told that she's a delinquent for running away and swearing, and will always be a delinquent. He never explained what an appeal means to Amy or explained her constitutional rights. See re Gault.

9.

At the initial hearing of August 4, 1984, the attorney never told Amy that she had the right to be released to her older married sister and to seek witnesses for her defense which the Sixth Amendment of the Federal Constitution guarantees as a due process right. See Kinney v Lennon 425 F.2d 208 (8th Cir. 1970). See in re Gault.

10.

At the initial hearing, the attorney knew that Patrolman LaCoste, the arresting officer, was not present; the par-

ents were not present in court, which is required under RSA 169-B:7. He also knew that the parents were named as the recipients/witnesses, parties to the disorderly conduct offense, RSA 644:2, were not present in court as necessary parties to the offense to confer subject matter jurisdiction upon the court, and they had to be in court to accord confrontation, cross-examination, which is guaranteed to Amy by the Due Process Clause of the Fourteenth Amendment of the Federal Constitution. He knew the court had no authority to act for failure of the recipients/witnesses and party to the offense to be in court. It was his duty to protect Amy's constitutional rights and move for a dismissal. It was also the duty of the Keene District Court, on its own motion, to move for a dismissal for lack of subject matter jurisdiction and personal ju-

risdiction. Instead, Amy was ordered to YDC on a plea of "NOT TRUE". Note: Amy was deprived of her liberty for 39 days.

11.

The petition dated August 4, 1984 clearly shows no return of service upon the parents. Said petition was signed by Sgt. H. Brown, making it fatally defective for failure to accord the recipients/witnesses named as parties to the offense, the legal right to sign said petition. If the parents had seen the petition charge against Amy M., they would not have signed it since said offense never happened. The petition charge is completely contrary to the police report of August 3, 1984. Such petition charge is therefore perjured and cannot sustain conviction. In Mooney v Holohan 294 US 103:

> "The constitutional requirement of due process is not satisfied where a conviction is obtained by the prose-

cution of testimony known to the prosecuting authorities to be perjured."

12.

As to timeliness for filing Amy's appeal, this N.H. Supreme Court cited the September 11, 1984 hearing as being an adjudicatory hearing. This is not true. There was no adjudicatory hearing. There was no plea of chargeable in court. It was a placement hearing, set by prior agreement by Judge Talbot, Attorneys Bennett and Park and YSI. See Rankin v Howard 633 F2d 844 (9th Cir. 1970); Escalera v New York Housing Authority 425 F2d 853 (2nd Cir. 1970); holding such prior agreement violative of due process and improper for failure to accord confrontation and cross-examination.

13.

At this time the court affirmed that Amy was not a delinquent and gave "legal

supervision" of Amy to YSI foster home. Parents were prohibited to exercise of their due process rights. NOTE: The Federal Court's Order of January 4, 1985 held that Judge Talbot in giving custody rights of Amy to YSI was clearly illegal relative parents' due process rights. Judge Talbot acted as a probate judge. Parents were not given written notice of the specifics that they were to meet at the September 11, 1984 hearing.

14.

The hearing of October 11, 1984, as with all other hearings, was nothing more than a continuation for the placement of Amy with YSI. Everyone present, except the parents, were given written issues prior to the hearing. Such issues withheld from the parents is improper, is violative of due process, see Rankin v Howard, supra, Escalera v New York Hous-

ing Authority, supra. There was no dispositional hearing. Judge Talbot had failed to instigate a neglect or CHINS petition for the change of placement of Amy from YDC to YSI, which is a private corporation. Judge Talbot ignored parents' due process rights under Gault, supra, and ignored parents' demand for the grounds for holding Amy, and for dismissal. (See Exh. 2)

15.

On February 13, 1985, the court admitted that the parents were never served summons with petition attached as required by law under RSA 169-B, therefore voided the attachment placed upon the parents' home for the cost of Amy's foster placement to YSI; is inadvertantly admitting that the recipients/witnesses named in the petition charge dated August 4, 1984 were not summoned, with petition attached,

to appear in court at the initial hearing to confer subject matter jurisdiction upon the court, the court had no case. RSA 169-B is therefore unenforceable, hence null and void for failure to give parents written notice as required by law under RSA 169-B:7 and is constitutionally required under the Due Process Clause as an Gault, supra, at 554, in state proceedings, where the delinquency charge was overturned by the U.S. Supreme Court for failure of the recipients to appear in court to accord confrontation and cross-examination guaranteed by the Due Process Clause of the Fourteenth Amendment. The court refused to return custody of Amy.

16.

The police report shows that the minor was in her own home at all times, and not on public property, therefore committed no offense under RSA 644:2, all of which

are characterized by the intent to disturb the public...and so by making unreasonable noises in a public place. See State v Laponsee 115 NH 56 (1975); State v Nickerson 120 NH 821 (1980). Patrolman LaCoste parked his car in parents' driveway before entering the house, he therefore was not on public property, therefore Amy could not commit an offense under RSA 169-B. Unreasonable seizure, N.H. Const. pt. 1, art. 19.

17.

This N.H. Supreme Court, in citing RSA 169-B:29, simply does not apply on grounds that Amy M. committed no delinquency offense in a public place, and swearing in the confines of her own home is certainly no offense under RSA 169-B. Thus Amy's appeal IS timely filed. There is no statute prohibiting the above appeal from being filed at any time so

chosen by Amy M.

18.

In March, 1985, Amy's parents apprised her of the August 4, 1984 petition charge against her. She said it was a lie, she never hit the parents. Parents told her that Mr. Bennett stole the police reports which would have acquited her and he prevented the parents from seeing the court files. Parents told her that it was only after Federal Court ordered the police records and court files released to the parents, were they able to help Amy defend the wrong. She was told that her own attorney lied at every hearing, he let her go to YDC when she could have been released to her older married sister. He knew the parents were not in court, the court had to dismiss the case and there would be no charge against her. Amy agreed to have her parents fight to get the delin-

quency charge dropped since she is not a delinquent and said she never wanted to go to YDC. See Exh. 3 re Court files, Exh. 4 Police file.

WHEREFORE: the parents and parties in interest for Amy M., are now before this Honorable Court and pray for the following:

1. Reconsideration of its denial dated February 10, 1986 upon the above stated grounds.

2. Overturn the delinquency charge entered by the lower Keene District Court, and/or

3. Allow appellant review by this Honorable Court.

4. The Keene District Court shall abide by the procedures set forth in re Gault.

Respectfully submitted,
Parents and parties in
interest,

Henry Malachowski

February 20, 1986

Julia Malachowski

28 Wright Street

Keene, New Hampshire 03431

CERTIFICATE OF SERVICE

We hereby certify that true copies of the foregoing Motion to Reconsider were mailed postage prepaid, to B. Kuster, Esq., Office of the Attorney General; Mark J. Bennett, City Attorney; Paul Schweizer, Esq., Public Defender, this 20th day of February, 1986.

Julia Malachowski Henry Malachowski

 EXHIBIT 1

THE STATE OF NEW HAMPSHIRE

JUVENILE PETITION

Cheshire SS. Keene District Court

84-210 Juvenile Case No.

TO THE JUSTICE OF SAID DISTRICT COURT:

The undersigned represents that Amy Christine Malachowski of 28 Wright St., Keene, NH being 16 years of age, and whose date of birth is 3 April, 1968 [XX] is delinquent...in that said juvenile on August 3, 1984 at 10:15 PM at Wright St., Keene NH is alleged to have committed the offense of Disorderly Conduct contrary to RSA 644:2, in that he/she did:

did purposely engage in fighting, tumultuous, and threatening behavior by yelling obsenities and engaging in physical contact with her parents Henry and Julia Malachowski, said conduct serving no ligitimate purpose, and said conduct continuing despite repeated lawful orders of Ptlm.

(JUVENILE PETITION - cont.)

Randall LaCoste of the Keene Police Department to stop,

and that Henry/Julia Malachowski of 28 Wright St., Keene NH is/are the person(s) having custody or control of the juvenile and that Henry/Julia Malachowski of Keene is/are the parents or guardians of said juvenile.

Date 4 AUG 84 Sgt. H. Brown - Juvenile Officer, Keene Police

(Petitioner's signature)

Subscribed and sworn to by petitioner, before me, Carol M Davis

(Justice of Peace)

ORDER OF NOTICE OF HEARING

The foregoing petition has been presented, it is ordered that a hearing be held at 9:00 on 4 AUG 1984 at said District Court, and Julia and or Henry Malachowski, the person(s) having custody or control of

(JUVENILE PETITION - cont.)

the juvenile is/are hereby summoned to appear with the juvenile at said hearing.

Date_____ Carol M Davis
(Clerk of Court) Acting

RETURN OF NOTICE

At_____on_____, 19__, I summoned and notified the within named person(s) having custody or control of the juvenile, to appear with the juvenile at said court as ordered herein.

_____
(Police Officer)

STATEMENT OF RIGHTS

You are advised that you have a right to be represented by an attorney, unless you waive or give up that right by signing a waiver. If you desire an attorney, you should hire one before the date set for hearing. If you are unable to afford an attorney, the Court will appoint one to represent you. YOU SHOULD CALL THE COURT

(JUVENILE PETITION - cont.)

IMMEDIATELY IF YOU WANT A COURT APPOINTED ATTORNEY. In the event that you need additional time to obtain an attorney or prepare a response to this petition, application should be made to the Court for an extension of time. You are further advised that you have a right to remain silent and need not make any statements or give any evidence which might show that you have committed the offense stated in the petition. Your silence even in the face of an accusation cannot be used against you, but what you say can be used against you.

Page 2

PRE-ARRAIGNMENT ORDERS

Pending arraignment said juvenile shall be ☐ placed ☐ detained at _____

pending arraignment on _____
(Date and time)

(JUVENILE PETITION - cont.)

It is further ordered that Attorney_____ be appointed to represent said juvenile.

_____ _____
Date Justice

ARRAIGNMENT

On 8/4, 1984 an arraignment was held. Present were:_____Counsel Park

Plea: ☐ True ☒ Not True

Hearing Date 8/21/84

Following arraignment it is ordered that said juvenile be held at YDC. A psychological exam is requested. City of Keene legally liable unit.

8/4/84 (Initialed)
Date Justice

ADJUDICATORY HEARING

On 9/11, 1984 an adjudicatory hearing was held. Present were Parents Counsel Park After hearing the evidence submitted the Court finds and orders as follows:

(JUVENILE PETITION - cont.)

[X] The State [X] did [ ] did not prove its case beyond a reasonable doubt Plea of chargeable

[ ] The evidence [ ] does [ ] does not substantiate the petition; petition is dismissed.

[ ] The case is referred to the Probation Department or other agency_____for an investigation and written report.

[ ] It is ordered that a physical and/or mental examination of the juvenile be conducted by_____with the expenses thereof borne by_____

[ ] The juvenile is to be held at_____ pending disposition on_____
Date and Time

The Court further orders: Legal supervision to YSI - con'd to 10/11/84 for final disposition. City of Keene legally liable unit.

9/11/84 (Initialed)
Date Justice

 EXHIBIT 1

(JUVENILE PETITION - cont.)

DISPOSITIONAL HEARING

On 10/11, 1984 a dispositional hearing was held. Present were Park for juvenile, parents & YSI

The following disposition is ordered:

☐ Juvenile is released in the custody of_

☐ Juvenile is released in the care and supervision of_____

☐ Fine ☐ Restitution in the amount of____

☐ Juvenile ordered to undergo the following treatment_____

☒ Other orders Legal supervision to YSI; family counselling recommended (?) possible; review 12/27/84 City of Keene legally liable unit

OR

☐ Juvenile committed to_____

in_____for his/her minority.

10/11/84
Date

(Initialed)
Justice

 EXHIBIT 2

28 Wright Street

Keene, New Hampshire 03431

October 05, 1984

Sergeant H. Brown

Keene Police Department

Juvenile Division

Washington Street

Keene, New Hampshire 03431

Re: Petition #84-210

Amy Christine Malachowski

Sir:

This is to confirm my conversation with you at your office on October 05, 1984.

The complainants in the above entitled action, Henry and Julia Malachowski, hereby respectfully request the Court to withdraw their complaint and dismiss all claims and/or charges in the petition brought by Sergeant H. Brown dated 4 August, 1984 in re Amy Christine Malachowski.

Respectfully submitted,

The Complainants,

_____L.S.
Henry Malachowski

_____L.S.
Julia Malachowski

Copy to: Clerk, Keene District Court

Mark Bennett, Esq.

David Park, Esq.

 EXHIBIT 3

THE STATE OF NEW HAMPSHIRE

(SEAL)

THE ATTORNEY GENERAL

STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 033-1-6397

January 3, 1985

Ms. Lucille J. Gorges, Clerk

Keene District Court

City Hall

Keene, New Hampshire 03431

Re: Malachowski, et al. v. Keene, et al.

Federal District Court Docket #84-697-L

Dear Ms. Gorges:

As we discussed in our telephone conversation on Wednesday, January 2, 1985, the Federal District Court held a hearing on all motions pending in the referenced case. During that hearing, Judge Loughlin requested that I contact your court to ascertain whether there would be any

objection to providing Mr. and Mrs. Malachowski access to the juvenile records of their daughter, Amy Christine Malachowski. Such access is apparently authorized by RSA 169-B:35 because the Malachowskis are the parents of the juvenile in question. It is my understanding that you have no objection to mailing a copy of Amy Malachowski's juvenile record to Mr. and Mrs. Malachowski. That being the case, I would appreciate it if you would mail a copy of that record at your convenience to: Mr. and Mrs. Henry Malachowski, 28 Wright Street, Keene, New Hampshire 03431.

Please note that the Court has not authorized anyone else to obtain these records. They should be sent only to the Malachowskis. If you have any questions concerning this matter, please let me know.

Very truly yours,

 EXHIBIT 3

Ronald F. Rodgers

Assistant Attorney General

Division of Legal Counsel

cc: counsel of record

 EXHIBIT 4

(SEAL) CITY OF KEENE
NEW HAMPSHIRE 03431

January 21, 1985

Mr. Henry Malachowski

28 Wright Street

Keene, NH 03431

RE: Malachowski, et ux vs. City of Keene, et al.

U.S. District Court, No. C-84-697-L

Dear Mr. Malachowski:

Pursuant to your request, and upon recent advice of my counsel, enclosed please find copies of the Police reports pertaining to Keene District Court No, 84-210 (juvenile), In re: Amy Malachowski. Please respect the confidentiality of these sensitive materials pertaining to a juvenile.

Sincerelv,

Mark J. Bennett
City Attorney

/ehl

cc: John P. Shea, Esq.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 85-394 In the Matter of Amy M.

the court upon April 17, 1986

made the following order:

Motion for reconsideration is denied

Ralph H. Wood

Clerk

28 Wright Street

Keene, New Hampshire 03431

April 18, 1986

Ralph H. Wood, Clerk

New Hampshire Supreme Court

Office of the Clerk

Concord, New Hampshire 03301

Re: Case No. 85-394

In the Matter of Amy M.

Dear Sir:

We, Henry and Julia Malachowski, parents and parties in interest for Appellant Amy M., are in receipt of the denial dated April 17, 1986 of the Motion for Reconsideration and find such order is without grounds and/or opinion and herein request clarification for denial of appellant's rights secured by the Constitution of the United States and the New Hampshire Constitution.

Request is herein made for the name(s)

of the judge(s) who are responsible for the order of denial entered April 17, 1986 for appellant's Motion for Reconsideration.

Thank you in advance for your anticipated cooperation.

Very truly yours,

Henry Malachowski

Julia Malachowski

Parents and parties in interest.

cc:

The Honorable John King, Chief Justice

The State of New Hampshire

Supreme Court

April 29, 1986

Mr. and Mrs. Henry Malachowski

28 Wright Street

Keene, New Hampshire 03431

Re: 85-394 In the Matter of Amy M.

Dear Mr. and Mrs. Malachowski:

This letter is in response to your letter of April 18, 1986, to the court.

Your first inquiry concerns the denial of your motion for consideration. The court seldom issues opinions or provides the grounds for the denial of motions for reconsideration.

Your second inquiry is for the "name(s) of the judge(s) who are responsible for the order of denial . . ." The New Hampshire Supreme Court consists of five justices. All five considered both your appeal and your motion for reconsideration.

Very truly yours,

Howard J. Zibel

Deputy Clerk

28 Wright Street

Keene, New Hampshire 03431

May 06, 1986

Howard J. Zibel

Deputy Clerk

The State of New Hampshire Supreme Court

Supreme Court Building

Concord, New Hampshire 03301

Re: 85-394 In the Matter of Amy M.

Dear Mr. Zibel:

In response to your letter dated April 29, 1986, the undersigned find it does not satisfy the inquiry made to the court on April 18, 1986.

Since we have no intention of letting the matter drop in view of the fact that the appellant, a minor, was deprived of written notice of the disorderly conduct charge and the opportunity to be heard as to the charge; and where the city attorney stole the police records and the par-

ents, acting pro se, were deprived of the right to see the court records until both were ordered by United States District Court to be released to the parents in January, 1985 - more than five (5) months after the minor's incarceration.

Therefore, we again strongly repeat the request for the names of the judges responsible. If all five considered the appeal and motion for consideration, then we want the names of all five.

Very truly yours,
Henry Malachowski
Julia Malachowski
Parents and parties in
Interest.

cc:
The Honorable John King, Chief Justice
Ralph H. Wood, Clerk of the Court

July 05, 1985

Office of the Clerk
Superior Court for the
State of New Hampshire
Court Street
Keene, New Hampshire 03431

Re: Amy Christine Malachowski
Docket #85-S-188

Dear Sir:

Enclosed please find for filing the following in the above referenced matter:

Letter dated January 3, 1985 to Ms. Lucill J. Gorges, Clerk of the Keene District Court in re Federal Order directing parents access to the file in re 84-210, signed by Ronald F. Rodgers, Assistant Attorney General.

Letter dated January 21, 1985 to the parents from Mark J. Bennett, Keene City Attorney, in compliance with the Federal Court Order to release the police reports

in re Amy C. Malachowski, 84-210.

Parents' affidavit in re the above dated February 15, 1985.

Federal Court Order of January 4, 1985 signed by U.S. District Judge Martin F. Loughlin.

Parents letter to Attorney General Stephen E. Merrill which is in re the criminal conduct of Mark J. Bennett in stealing the police reports in re Amy C. Malachowski, 84-210.

Very truly yours,

Henry Malachowski
28 Wright Street
Keene, New Hampshire 03431
352-5822

The State of New Hampshire

Supreme Court

May 12, 1986

Mr. & Mrs. Henry Malachowski

28 Wright Street

Keene, N.H. 03431

Re: No. 85-394 In the Matter of Amy M.

Dear Mr. & Mrs. Malachowski:

You have requested in your letter of May 6, 1986, the names of the five justices of the New Hampshire Supreme Court. They are as follows:

Hon. John W. King, Chief Justice

Hon. David A. Brock

Hon. William F. Batchelder

Hon. David H. Souter

Hon. William R. Johnson

Very truly yours,

Howard J. Zibel

Deputy Clerk

E X H I B I T S

28 Wright Street

Keene, New Hampshire 03431

December 14, 1985

Office of the Clerk

New Hampshire Supreme Court

Supreme Court Building

Concord, N.H. 03301

Re: State v Amy M. No. 85-394

Dear Sir:

On August 23, 1985 an appeal was filed with this Court in the above matter.

Under directive of Ralph Wood, Clerk, appellees have filed a brief.

To date the undersigned have not received notice of a scheduling order or notice to file a brief and/or reply brief to appellees' briefs.

Thanking you in advance for your anticipated cooperation in this matter, we are

Very truly yours,

Henry Malachowski

Julia Malachowski

Parents, parties in interest and next best friend.

28 Wright Street
Keene, New Hampshire 03431

January 15, 1986

In the Chambers of The Honorable
John King, Chief Justice
New Hampshire Supreme Court
Supreme Court Building
Concord, New Hampshire 03301

Re: State v Amy M. No. 85-394

Dear Sir:

On August 23, 1985 an appeal was filed with this Court from an order of the Cheshire Superior Court wherein due process and equal protection of the laws were denied to the minor and her parents by the Keene District Court.

A Motion to Expedite was ignored and only respondents answered by briefs scheduled by the Clerk, Ralph H. Wood.

Parents, as parties in interest have not been afforded any scheduling order to

rebut, cross examine responents briefs. (See attached Letter dated December 14, 1985)

Parents have filed suit in Federal Court No. 84-697L on November 1, 1984 against the respondents for their unconstitutional conduct in violating parents' rights secured by the federal constitution for such unlawful seizure of parents' minor daughter in violation of the First and Fourth Amendment to the Federal Constitution and illegal placement of parents' daughter as clearly violative of the due process clause to the Fourteenth Amendment of the federal constitution where respondents ignored N H laws and its Constitution.

Parents, as parties in interest find that the Clerk, Ralph H. Wood has not afforded this minor protection of her rights secured by the N. H. Constitution

and federal constitution to have the N.H. Supreme Court make a decision upon the minor's constitutional claims.

Thanking Your Honor in advance for your anticipated cooperation in this matter, we are

Very truly yours,
Henry Malachowski
Julia Malachowski
Parents, parties in interest and next best friend.